

13-26-3 Registration and bond required.

- (1)
 - (a) Unless exempt under Section 13-26-4, each telephone soliciting business shall register annually with the division before engaging in telephone solicitations if:
 - (i) the telephone soliciting business engages in telephone solicitations that:
 - (A) originate in Utah; or
 - (B) are received in Utah; or
 - (ii) the telephone soliciting business conducts any business operations in Utah.
 - (b) The registration form shall designate an agent residing in this state who is authorized by the telephone soliciting business to receive service of process in any action brought by this state or a resident of this state.
 - (c) If a telephone soliciting business fails to designate an agent to receive service or fails to appoint a successor to the agent:
 - (i) the business' application for an initial or renewal registration shall be denied; and
 - (ii) any current registration shall be suspended until an agent is designated.
 - (d)
 - (i) For purposes of this section only, the registered agent of a telephone soliciting business shall provide the division proof of residency in the state.
 - (ii) Proof of residency under Subsection (1)(d)(i) may be provided by a valid Utah driver license, valid governmental photo identification issued to a resident of the state, or other verifiable identification indicating residency in the state.
- (2) The division may impose an annual registration fee set pursuant to Section 63J-1-504 that may include the cost of the criminal background check described in Subsection (4).
- (3)
 - (a) Each telephone soliciting business engaging in telephone solicitation or sales in this state shall obtain and maintain the following security:
 - (i) a performance bond issued by a surety authorized to transact surety business in this state;
 - (ii) an irrevocable letter of credit issued by a financial institution authorized to do business in this state; or
 - (iii) a certificate of deposit held in this state in a depository institution regulated by the Department of Financial Institutions.
 - (b) The bond, letter of credit, or certificate of deposit shall be payable to the division for the benefit of any consumer who incurs damages as the result of any telephone solicitation or sales violation of this chapter.
 - (c) The division may recover from the bond, letter of credit, or certificate of deposit investigative costs, attorney fees, and other costs of collecting and distributing funds under this section and the costs of promoting consumer education, but only if the consumer has first recovered full damages.
 - (d) A telephone soliciting business shall keep a bond, certificate of deposit, or letter of credit in force for one year after it notifies the division in writing that it has ceased all activities regulated by this chapter.
 - (e) The amount to be posted in the form of a bond, irrevocable letter of credit, or certificate of deposit shall be:
 - (i) \$25,000 if:
 - (A) neither the telephone soliciting business nor any affiliated person has violated this chapter within three years preceding the date of the application; and
 - (B) the telephone soliciting business has fewer than 10 employees;
 - (ii) \$50,000 if:

- (A) neither the telephone soliciting business nor any affiliated person has violated this chapter within three years preceding the date of the application; and
- (B) the telephone soliciting business has 10 or more employees; or
- (iii) \$75,000 if the telephone soliciting business or any affiliated person has violated this chapter within three years preceding the date of the application.
- (f) For purposes of Subsection (3)(e) an "affiliated person" means a contractor, director, employee, officer, owner, or partner of the telephone soliciting business.
- (4)
 - (a) As used in this Subsection (4), "participant" means an individual with a controlling interest in or an owner, officer, director, member, principal, trustee, general partner, limited partner, manager, sole proprietor, or key employee of a person seeking to register or renew a registration as a telephone soliciting business.
 - (b) As part of the process to register or renew a registration as a telephone soliciting business, a participant:
 - (i) may not, within the previous 10 years, have been convicted of a felony;
 - (ii) may not, within the previous 10 years, have been convicted of a misdemeanor involving moral turpitude, including theft, fraud, or dishonesty; and
 - (iii) shall submit to the division:
 - (A) the participant's fingerprints, in a form acceptable to the division, for purposes of a criminal background check; and
 - (B) consent to a criminal background check by the Bureau of Criminal Identification created in Section 53-10-201.
- (5) The division may establish by rule the registration requirements for telephone soliciting businesses under the terms of Title 63G, Chapter 3, Utah Administrative Rulemaking Act. An administrative proceeding conducted by the division under this chapter shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- (6) If information in an application for registration or for renewal of registration as a telephone soliciting business materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after the information changes or becomes incorrect or incomplete, correct the application or submit the correct information to the division in a manner that the division establishes by rule.
- (7) The division director may deny or revoke a registration under this section for any violation of this chapter.

Amended by Chapter 124, 2013 General Session